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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

1650 Arch Street

Philadelphia, Pennsylvania 19103-2029

REGIONAL HEARING CLERK  
EPA REGION III, PHILA. PA

In the Matter of:

Proceeding to Assess Class II  
Administrative Penalty Under  
Section 309(g) of the Clean Water Act

Town of Indian Head  
4195 Indian Head Hwy  
Indian Head, Maryland

Docket No. CWA-03-2016-0011

Respondent.

**CONSENT AGREEMENT  
AND FINAL ORDER**

**I. PRELIMINARY STATEMENT and STATUTORY AUTHORITY**

1. This Consent Agreement is entered into by the Director, Water Protection Division, United States Environmental Protection Agency, Region III ("Complainant") and Town of Indian Head, Maryland ("Town of Indian Head" or "Respondent") pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22. The parties have agreed to settlement of violations of the Clean Water Act by Respondent. This Consent Agreement and Final Order ("CAFO") simultaneously commences and concludes this action pursuant to 40 C.F.R. § 22.13(b) and 22.18(b)(2) and (3).

2. Pursuant to Section 309(g) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(g), the Administrator of the United States Environmental Protection Agency ("EPA" or "Agency") is authorized to assess administrative penalties against any person who violates any NPDES permit condition or limitation in an amount not to exceed \$10,000 per day for each day of violation, up to a total penalty amount of \$125,000.

3. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 (effective January 12, 2009), any person who has violated any NPDES permit condition or limitation after January 12, 2009 is liable for an administrative penalty not to exceed \$16,000 per day for each day of violation occurring after January 12, 2009 up to a total penalty amount of \$187,500 if such violation occurred after December 6, 2013.

**II. FINDINGS OF FACT, JURISDICTIONAL ALLEGATIONS, and CONCLUSIONS OF LAW**

4. Respondent is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

5. At all times relevant to this Complaint, Respondent has owned and/or operated a municipal separate storm sewer system (“MS4”) as that term is defined in 40 C.F.R. § 122.26(b)(8).

6. Respondent’s MS4 is located within the geographic boundaries of the County.

7. Respondent’s MS4 is located within the Town of Indian Head, Indian Head, Maryland (the Indian Head MS4), which is an urbanized area as determined by the 2000 Decennial Census by the Bureau of the Census, and requires an NPDES permit to discharge storm water pursuant to 40 C.F.R. § 122.32(a)(1).

8. The Town of Indian Head encompasses a total area of approximately 1.23 square miles. According to the 2010 Census, its population is estimated at 3,844 people.

9. The Town of Indian Head MS4 is a “small MS4” within the meaning of 40 C.F.R. § 122.26(b)(16).

10. Respondent’s MS4 discharges stormwater to the Mattawoman Creek, Potomac River and their associated tributaries. The Mattawoman Creek, Potomac River, and their associated tributaries are “waters of the United States” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 122.2.

11. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the State of Maryland to issue General NPDES permits in 1991.

12. On September 27, 2001, MDE issued notice to the Town of Indian Head that an NPDES General Permit for Discharges From Small Municipal Separate Storm Sewer Systems (MS4s) (General Discharge Permit No. 03-IM-5500 or the 2003 small MS4 Permit) that authorized the discharge of stormwater from small MS4s, generally defined as MS4s located in an incorporated place with a population less than 100,000. See 40 C.F.R. § 122.26(b). In order to be eligible for general permit coverage, a regulated MS4 had to submit a Notice of Intent (NOI) to MDE. On April 16, 2003, MDE provided notice about the application process to the Town of Indian Head. The deadline to apply for MS4 permit coverage was June 13, 2003.

13. The Town of Indian Head never submitted an NOI to MDE to obtain coverage under the 2003 small MS4 Permit until September 2015.

14. The 2003 small MS4 Permit, Part III, "Minimum Control Measures" required permittees to implement programs to reduce the discharge of pollutants from small MS4s. These programs shall include Best Management Practices (BMPs) to comply with the following six Minimum Control Measures (MCMs): (A) Public Education and Outreach; (B) Public Involvement and Participation; (C) Illicit Discharge Detection and Elimination, (D) Construction Site Stormwater Runoff Control; (E) Post-Construction Stormwater Management; and (F) Pollution Prevention and Good Housekeeping.

15. Until September 2015, despite the passage of 12 years, the Town of Indian Head had not submitted a permit application. Within the period of the last five years, there have been at least 116 rainfall events, resulting in 116 stormwater discharges from the regulated MS4 without a permit, resulting in 116 violations of discharges to waters of the US without a permit.

16. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System ("NPDES") program under Section 402 of the Act, 33 U.S.C. § 1342.

17. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit.

18. "Discharge of a pollutant" includes "any addition of any pollutant or combination of pollutants to waters of the United States from any point source." 40 C.F.R. § 122.2.

19. "Storm water" is defined as "storm water runoff, snow melt runoff and surface runoff and drainage." 40 C.F.R. § 122.26(b)(13).

20. The term "municipal separate storm sewer system" ("MS4") includes, "a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States." 40 C.F.R. § 122.26(b)(8)(i).

21. An NPDES permit is required for discharges from an MS4 serving a population of 100,000 or more, Section 402(p)(2)(C) of the Act, 33 U.S.C. § 1342(p); 40 C.F.R. § 122.26(a), 40 C.F.R. § 122.21.



22. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Maryland Department of the Environment ("MDE") to issue NPDES permits on September 5, 1974.

23. An NPDES permit is also required for discharges of storm water associated with industrial activity, as well as for stormwater discharges which MDE or EPA determine to be a significant contributor of pollutants or that contributes to a violation of a water quality standard. Section 402(p)(2) of the Act, 33 U.S.C. § 1342(p)(2); 40 C.F.R. § 122.26(a), 40 C.F.R. § 122.21.

24. Until September 2015, despite the passage of 12 years, Respondent failed to submit a permit application. Within the period of the last five years, there have been at least 116 rainfall events, resulting in 116 stormwater discharges from the regulated MS4 without a permit.

### **III. FINDINGS OF VIOLATION**

25. Respondent's failure to submit a permit application, resulted in 116 violations of discharges to waters of the US without a permit.

### **IV. CONSENT AGREEMENT AND FINAL ORDER**

26. Respondent admits the Findings of Fact, Jurisdictional Allegations, and Conclusions of Law set forth in Section II, above.

27. Respondent neither admits nor denies EPA's Findings of Violation set forth in Section III, above.

28. Respondent agrees not to contest EPA's jurisdiction to issue and enforce this CAFO.

29. Respondent hereby expressly waives its right to a hearing on any issue of law or fact in this matter pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and consents to issuance of this CAFO without adjudication.

30. Each party to this action shall bear its own costs and attorney fees.

31. The provisions of this CAFO shall be binding upon the Respondent, its officers, principals, directors, successors and assigns.

32. The parties agree that settlement of this matter prior to the initiation of litigation is in the public interest and that entry of this CAFO is the most appropriate means of resolving this matter.

33. Pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA is providing public notice and an opportunity to comment on the Consent

Agreement prior to issuing the Final Order. In addition, pursuant to Section 309(g)(1)(A), EPA has consulted with the State of Maryland regarding this action, and will mail a copy of this document to the appropriate Maryland official.

34. Based upon the foregoing and having taken into account the nature, circumstances, extent and gravity of the violation(s), Respondent's ability to pay, prior history of compliance, degree of culpability, economic benefit or savings resulting from the violations, and such other matters as justice may require pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), EPA HEREBY ORDERS AND Respondent HEREBY CONSENTS to pay a civil penalty in the amount of **twenty-nine thousand seven hundred dollars (\$29,700)** in full and final settlement of EPA's claims for civil penalties for the violations alleged herein.

35. Respondent shall pay the total administrative civil penalty of **twenty-nine thousand seven hundred dollars (\$29,700)** within thirty (30) days of the effective date of this CAFO pursuant to 40 C.F.R. § 22.31(c). Payment shall be made by one of the following methods set forth below.

All payments by Respondent shall reference Respondent's name and address and the Docket Number of this action, CWA-03-2016-0011.

Payment by check to "United States Treasury":

By regular mail:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
Box 979077  
St. Louis, MO 63197-9000

Contact: 513-487-2091

By overnight delivery:

U.S. Bank  
Government Lock Box 979077  
US EPA, Fines and Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101

Contact: 314-418-1028

By Wire Transfer:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT Address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
(Field Tag 4200 of the wire transfer message should read:  
D 68010727 Environmental Protection Agency)

By Automated Clearinghouse (ACH) Transfers for receiving U. S. currency (also known as REX or remittance express):

US Treasury REX / Cashlink ACH Receiver  
ABA = 051036706  
Account No.: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:  
5700 Rivertech Court  
Riverdale, MD 20737

Contact for ACH: John Schmid (202-874-7026)  
Remittance Express (REX): 1-866-234-5681

On-Line Payments:

WWW.PAY.GOV  
Enter sfo 1.1 in the search field  
Open form and complete required fields.

Additional payment guidance is available at:

[http://www.epa.gov/ocfo/finservices/make\\_a\\_payment.htm](http://www.epa.gov/ocfo/finservices/make_a_payment.htm)

Respondent shall send notice of such payment, including a copy of the check if payment is made by check, to the Regional Hearing Clerk at the following address:

Regional Hearing Clerk (3RC00)

U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

-and-

Pamela J. Lazos  
Mail Code 3RC20  
Office of Regional Counsel  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

36. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law and ordinance, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit. Nor does this CAFO constitute a waiver, suspension or modification of the requirements of the CWA, 33 U.S.C. §§ 1251 *et seq.*, or any regulations promulgated thereunder.

37. The following notice concerns interest and late penalty charges that will accrue in the event that any portion of the civil penalty is not paid as directed:

Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payments as required herein or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which it is due. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

38. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).



39. This CAFO resolves only the civil claims for the specific violations alleged herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present and imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under the Clean Water Act, 33 U.S.C. § 301 *et seq.*, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.
40. The penalty specified in Paragraph 34 shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.
41. Entry of this CAFO is a final settlement of all violations alleged in this CAFO. EPA shall have the right to institute a new and separate action to recover additional civil penalties for the claims made in this CAFO if the EPA obtains evidence that the information and/or representations of the Respondent are false, or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action, civil or criminal, the EPA may have under law or equity in such event.
42. The undersigned representative of Respondent certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.
43. All of the terms and conditions of this CAFO together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this CAFO, or one or more of its terms and conditions, is held invalid, or is not executed by all of the signatories in identical form, or is not approved in such identical form by the Regional Administrator or his designee, then the entire CAFO shall be null and void.

**V. PUBLIC NOTICE AND EFFECTIVE DATE**

44. This CAFO will be issued after a forty (40) day notice period, execution by an authorized representative of EPA, and filing with the Regional Hearing Clerk. It will become final and effective thirty (30) days after issuance. Payment of the civil penalty assessed in this CAFO is due thirty (30) days after the effective date.



FOR RESPONDENT, TOWN OF INDIAN HEAD

Date: 2-26-16  
By: Brandon A. Paulin  
Name: Brandon A. Paulin  
Title: Mayor

*In re: Town of Indian Head*  
*EPA Docket No.: CWA-03-2016-0011*

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

Date:

5/17/2016

A handwritten signature in black ink, appearing to read "Jon M. Capacasa", written over a horizontal line.

Jon M. Capacasa, Director  
Water Protection Division

*In re: Town of Indian Head*  
*EPA Docket No.: CWA-03-2016-0011*

SO ORDERED, pursuant to 33 U.S.C. 1319(g), and 40 C.F.R. Part 22,

this 2<sup>nd</sup> day of June, 2016

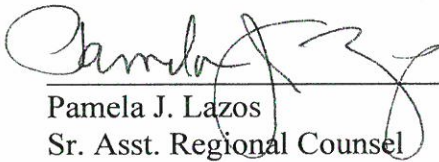
*Shawn M. Garvin*  
Shawn M. Garvin *for SMC*  
Regional Administrator  
U.S.EPA Region III



CERTIFICATION OF SERVICE

I hereby certify that I sent a true and correct copy of the Consent Agreement and Final Order to the Town of Indian Head via certified mail, return receipt requested, at the address listed below after filing the original with the Regional Hearing Clerk, US EPA Region III, 1650 Arch St., Philadelphia, PA 19103.

Town of Indian Head  
4195 Indian Head Hwy  
Indian Head, MD 20640




\_\_\_\_\_

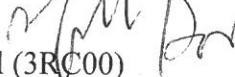
Pamela J. Lazos  
Sr. Asst. Regional Counsel  
US EPA Region III

6/4/16  
\_\_\_\_\_  
Date:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

**SUBJECT:** Consent Agreement and Final Order (CAFO) And Administrative Order on Consent (AOC) for the Town of Indian Head, Maryland

**FROM:** Jon Capacasa, Director   
Water Protection Division (3WP00)

Mary C. Coe   
Regional Counsel (3RC00)

**TO:** Shawn M. Garvin  
Regional Administrator (3RA00)

Enclosed for your signature is a Consent Agreement and Final Order (CAFO) for the Town of Indian Head, Maryland, for violations of the CWA. A forty-day public notice period has been concluded and there were no comments on the documents. EPA became aware of the Town's failure to obtain a Municipal Separate Storm Sewer (MS4) permit as a result of a review of MDE's files. The City has already taken numerous steps to address the violations and has agreed to pay a penalty of \$29,700.

Should you have any questions, please contact Pamela Lazos, Senior Assistant Regional Counsel at xt. 2658.

We request that you sign the enclosed Final Order.

cc: Ryan Hicks, Town Manager



